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August 13, 1990

Ms. Beth Henning
Assistant Regional Counsel
U.S. EPA - Region V
230 South Dearborn Street
Chicago, Illinois 60604

Re: Albion-Sheridan Township Landfill,
Calhoun County, Michigan

Dear Ms. Henning:

On December 14, 1988, Hayes-Albion Corporation submitted its answers to U.S. EPA's 104(e) information request. Hayes-Albion's answers stated definitively that it had not transported hazardous substances for disposal at the Albion-Sheridan Township Landfill. Furthermore, neither Hayes-Albion nor U.S. EPA have discovered any credible evidence of Hayes-Albion's disposal of hazardous substances at the Landfill in the twenty months that have followed Hayes-Albion's 104(e) response. Accordingly, this letter requests that U.S. EPA remove Hayes-Albion from the list of PRPs considered to have potential liability for the cleanup of the Landfill.

Notwithstanding the lack of evidence, U.S. EPA included Hayes-Albion on the list of persons subject to an unilateral administrative order dated March 19, 1990. The order did not contain a specific allegation of liability, but stated generally U.S. EPA's belief that Hayes-Albion either owned or operated the Landfill or arranged for the disposal of hazardous substances at the Landfill. This was the first occasion Hayes-Albion learned of its PRP status. In response, Hayes-Albion submitted three letters (dated April 26, May 8, and May 17) along with supporting affidavits to U.S. EPA demonstrating that it was not responsible for performing the activities set forth in the order.

Although U.S. EPA has not manifested its position in writing, you have communicated to my associate Grant P. Gilezan (in a phone conversation on June 7) that U.S. EPA regards

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Hayes-Albion's decision not to comply with the administrative order as "not outrageous." You further stated during that phone conversation that, in consideration of the insufficient evidence demonstrating Hayes-Albion's potential liability, U.S. EPA prefers to quietly not seek enforcement of the order against Hayes-Albion -- as opposed to formally withdrawing Hayes-Albion from the list of PRPs subject to the order.

U.S. EPA's incorrect listing of Hayes-Albion frustrates it to no end. It is inconceivable that U.S. EPA prefers to allow this issue to languish indefinitely instead of making the appropriate correction. Hayes-Albion regards its PRP status seriously, and well it should. To be labelled a PRP is an onerous status with many practical implications in the financial community and public arena. U.S. EPA should not subject a person to these implications unless potential liability is demonstrated by the present state of evidence.

In addition, U.S. EPA's course of action indirectly reduces the significance of PRP status and, thereby, contravenes CERCLA policy. PRP status is intended to compel active participation in investigatory and remedial activities. By not expeditiously removing PRP status when such action is warranted, however, U.S. EPA establishes the unwanted result of encouraging persons not to take their PRP status seriously. Indeed, if the imposition of PRP status does not manifest U.S. EPA's present specific knowledge -- but is merely conditioned on the possibility (however remote) that evidence may be discovered in the future -- then what incentive exists for a PRP to participate? Certainly, U.S. EPA would not want to impede CERCLA's organizational goals by applying PRP status in such an overly broad fashion.

Clearly, U.S. EPA has erred in its identification of Hayes-Albion as a PRP. Hayes-Albion has never owned or operated the Landfill and it has never disposed of hazardous substances at the Landfill. Simply stated, PRP status is not warranted under Section 107 of CERCLA.

As further support for its de-listing request, Hayes-Albion directs U.S. EPA's attention to the documents provided in Hayes-Albion's 104(e) response. The Affidavit of Gene Collins indicates that a purchase order was never issued by Hayes-Albion for hazardous substance disposal at the Landfill. In fact, according to Mr. Collins, Hayes-Albion does not generate a hazardous waste stream. Rather, as the Affidavit of Allan Currie confirms, only used oil is stored on-site (in an above-ground storage tank), and it is ultimately collected by an oil recycling company.

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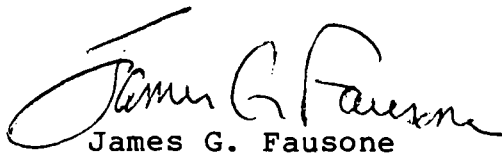
On the other hand, Mr. Collins avers that Don Hull, of White-Haul Company, was the sole refuse contractor retained by Hayes-Albion. Mr. Hull's Affidavit confirms he hauled Hayes-Albion's refuse to the Landfill for nearly eighteen years. He likewise confirms that Hayes-Albion's refuse did not contain liquids, drums (empty or full), or hazardous substances of any kind, but consisted of office trash, wooden pallets, and cardboard boxes.

In sum, Hayes-Albion has undertaken considerable efforts to discover evidence, if any, of its disposal of hazardous substances at the Landfill. Pursuant to these efforts and the fact that U.S. EPA has discovered no evidence to the contrary, Hayes-Albion is convinced that it is not an owner, operator, or generator as defined under Section 107 of CERCLA. Therefore, Hayes-Albion respectfully requests that U.S. EPA declare formally and in writing that Hayes-Albion is not potentially liable for the cost of investigating and remediating conditions at the Landfill.

If you have any questions or comments regarding this matter, please contact me or my associate Grant Gilezan (313-568-6789). This letter shall become a part of the administrative record.

Very truly yours,

DYKEMA GOSSETT

A handwritten signature in dark ink, appearing to read "James G. Fausone". The signature is fluid and cursive, with a large initial "J" and "F".

James G. Fausone
(313) 568-6957

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cc: Allan B. Currie
Grant P. Gilezan